



**FILED**  
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*Kevin Smith*  
**CLERK**  
of the supreme court,  
court of appeals and  
tax court

**BAKER, Chief Judge**

Appellant-defendant Ronnie C. Smith petitions for rehearing following our memorandum decision in Smith v. State, No. 15A01-0707-CR-336 (Ind. Ct. App. April 14, 2008), where we affirmed his conviction for Conspiracy to Manufacture Methamphetamine,<sup>1</sup> a class B felony. In the original appeal, Smith argued that he was entitled to a reversal of his conviction because the prosecutor committed misconduct when he read a poem entitled “My Name is Meth” to the jury during voir dire. The prosecutor also questioned some of the State’s witnesses regarding the dangers of methamphetamine and commented during closing argument about the use and dangers of methamphetamine in the community. We determined that Smith waived the issue of prosecutorial misconduct because he failed to: (1) properly object at trial; (2) request an admonishment; or (3) move for a mistrial. Slip op. at 9. We reaffirm our holding, but grant rehearing for the limited purpose of addressing Smith’s claim that the prosecutor’s conduct amounted to fundamental error.

We note that in a companion case involving one of Smith’s codefendants, a different panel of this court in Gregory v. State, 885 N.E.2d 697 (Ind. Ct. App. 2008) addressed the nearly identical issue that Smith now presents. Although the defendant in Gregory properly preserved the allegation of prosecutorial misconduct on appeal, it was determined that “the reading of the poem was not misconduct.” Id. at 707 (Kirsch, J., concurring in result). Moreover, the Gregory court concluded that the questions posed to the State’s witnesses regarding the dangers of methamphetamine “did not amount to

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<sup>1</sup> Ind. Code § 35-48-4-1.1(a)(1)(a); Ind. Code § 35-41-2-4.

misconduct, let alone fundamental error.” Id. at 707. Finally, the Gregory court determined that the prosecutor’s comments made during closing argument did not constitute misconduct because the statements were “nothing more than the prosecutor’s opinion that methamphetamine has disastrous effects on the community.” Id. at 708. We likewise conclude in this case that that the prosecutor’s comments and questions posed to the State’s witnesses did not result in error—much less fundamental error. As a result, although we grant Smith’s petition for rehearing, we affirm our original opinion in all respects.

RILEY, J., and ROBB, J., concur.